S T A T E O F N E W Y O R K

7757

2011-2012 Regular Sessions

I N A S S E M B L Y

May 16, 2011

Introduced by M. of A. THIELE -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to enacting the New York fair campaign code

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The article heading of article 14 of the election law is amended to read as follows:

CAMPAIGN PRACTICES, RECEIPTS AND EXPENDITURES

S 2. Sections 14-100 through 14-130 of article 14 of the election law are designated title I and such title is amended by adding a new title heading to read as follows:

GENERAL PROVISIONS

S 3. Article 14 of the election law is amended by adding a new title II to read as follows:

TITLE II

FAIR CAMPAIGN CODE

SECTION 14-200. FAIR CAMPAIGN CODE.

14-202. USE OF PUBLIC OPINION POLLS AND ENDORSEMENTS.

14-204. POWERS AND DUTIES OF THE STATE BOARD OF ELECTIONS.

S 14-200. FAIR CAMPAIGN CODE. 1. NO PERSON, POLITICAL PARTY OR COMMITTEE DURING THE COURSE OF ANY CAMPAIGN FOR NOMINATION OR ELECTION TO PUBLIC OFFICE OR PARTY POSITION SHALL, DIRECTLY OR INDIRECTLY, WHETHER BY MEANS OF PAYMENT OF MONEY OR ANY OTHER CONSIDERATION, ENGAGE IN OR COMMIT ANY OF THE FOLLOWING:

(A) WILLFUL PRACTICES OF POLITICAL ESPIONAGE INCLUDING, BUT NOT LIMITED TO, THE THEFT OF CAMPAIGN MATERIALS OR ASSETS, PLACING ONE'S OWN EMPLOYEE OR AGENT IN THE CAMPAIGN ORGANIZATION OF ANOTHER CANDIDATE, BRIBERY OF MEMBERS OF ANOTHER'S CAMPAIGN STAFF, ELECTRONIC OR OTHER METHODS OF EAVESDROPPING OR WIRETAPPING.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11609-01-1

(B) WILLFUL PREPARATION OR DISTRIBUTION OF ANY WRITING KNOWN TO BE FRAUDULENT, FORGED OR FALSELY IDENTIFIED OR THE WILLFUL USE OF ANY EMPLOYEES OR AGENTS WHO FALSELY REPRESENT THEMSELVES AS SUPPORTERS OF A CANDIDATE, POLITICAL PARTY OR COMMITTEE.

(C) WILLFUL MISREPRESENTATION OF ANY CANDIDATE'S PARTY AFFILIATION OR PARTY ENDORSEMENT OR ENDORSEMENT BY PERSONS OR ORGANIZATIONS INCLUDING, BUT NOT LIMITED TO, THE WILLFUL USE OF DOCTORED PHOTOGRAPHS OR WRITINGS OR FRAUDULENT OR UNTRUE ENDORSEMENTS.

(D) WILLFUL MISREPRESENTATION, WITH INTENT TO DECEIVE, OF THE CONTENTS OR RESULTS OF A POLL RELATING TO ANY CANDIDATE'S ELECTION.

2. THE STATE BOARD OF ELECTIONS SHALL MONITOR THE ADEQUACY AND EFFECTIVENESS OF THIS SECTION AND RECOMMEND SUCH LEGISLATION OR ADMINISTRATIVE MEASURES AS IT FINDS APPROPRIATE.

S 14-202. USE OF PUBLIC OPINION POLLS AND ENDORSEMENTS. 1. NO CANDIDATE, POLITICAL PARTY OR COMMITTEE DURING THE COURSE OF ANY CAMPAIGN FOR NOMINATION OR ELECTION TO PUBLIC OFFICE OR PARTY POSITION SHALL, DIRECTLY OR INDIRECTLY, DISCLOSE OR PERMIT TO BE DISCLOSED, THE RESULTS OF A POLL RELATING TO A CANDIDATE FOR SUCH OFFICE OR POSITION, UNLESS WITHIN FORTY-EIGHT HOURS AFTER SUCH DISCLOSURE, SUCH CANDIDATE PROVIDES THE FOLLOWING INFORMATION CONCERNING THE POLL TO THE BOARD OR OFFICER WITH WHOM STATEMENTS OR COPIES OF STATEMENTS OF CAMPAIGN RECEIPTS AND EXPENDITURES ARE REQUIRED TO BE FILED BY THE CANDIDATE TO WHOM SUCH POLL RELATES:

(A) THE NAME AND ADDRESS OF THE ORGANIZATION THAT CONDUCTED THE POLL.

(B) THE NUMERICAL SIZE OF THE TOTAL POLL SAMPLE, THE GEOGRAPHIC AREA COVERED BY THE POLL AND ANY SPECIAL CHARACTERISTICS OF THE POPULATION INCLUDED IN THE POLL SAMPLE.

(C) THE EXACT WORDING OF THE QUESTIONS ASKED IN THE POLL AND THE SEQUENCE OF SUCH QUESTIONS.

(D) THE METHOD OF POLLING, WHETHER BY PERSONAL INTERVIEW, TELEPHONE, MAIL OR OTHER.

2. IN ANY CASE WHERE A PERSON OR ORGANIZATION ENDORSING THE CANDIDATE HAS BEEN PAID FOR SUCH ENDORSEMENT BY THE CANDIDATE OR SOMEONE ACTING ON HIS BEHALF, A STATEMENT SIGNED BY THE CANDIDATE AND STATING THE CONSIDERATION FOR THE ENDORSEMENT SHALL BE FILED WITHIN FORTY-EIGHT HOURS OF THE ENDORSEMENT IN THE OFFICE IN WHICH THE CANDIDATE IS REQUIRED TO FILE HIS STATEMENTS UNDER SECTION 14-110 OF THIS ARTICLE.

S 14-204. POWERS AND DUTIES OF THE STATE BOARD OF ELECTIONS. 1. UNLESS A SPECIAL PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION 16-111 OF THIS CHAPTER HAS BEEN COMMENCED, THE STATE BOARD OF ELECTIONS, ON ITS OWN INITIATIVE, OR UPON COMPLAINT OR OTHERWISE, MAY INVESTIGATE ANY ALLEGED VIOLATION OF THIS TITLE.

2. A VIOLATION OF THE PROVISIONS OF THIS TITLE SHALL BE PUNISHABLE BY A CIVIL PENALTY, NOT TO EXCEED ONE THOUSAND DOLLARS, TO BE IMPOSED BY THE BOARD UPON ANY PERSON FOUND BY THE BOARD, UPON CLEAR AND CONVINCING EVIDENCE, AFTER A HEARING, TO HAVE VIOLATED ANY OF THE PROVISIONS OF SUCH CODE.

3. ANY SUCH FINDING BY THE BOARD MAY ONLY BE HAD AFTER A HEARING CONDUCTED BY IT UPON REASONABLE WRITTEN NOTICE, AS THE BOARD MAY DETERMINE, TO SUCH PERSON AND AFFORDING SUCH PERSON A REASONABLE OPPORTUNITY TO BE HEARD AND PRESENT AND EXAMINE WITNESSES THEREAT.

4. SHALL THE BOARD FAIL FOR ANY REASON TO TAKE FINAL ACTION WITH RESPECT TO SUCH COMPLAINT WITHIN NINETY DAYS OF THE FILING THEREOF, THE AGGRIEVED PARTY MAY, WITHOUT PREJUDICE, WITHDRAW SUCH COMPLAINT AND COMMENCE A PROCEEDING IN SUPREME COURT PURSUANT TO SUBDIVISION ONE OF SECTION 16-111 OF THIS CHAPTER.

S 4. The election law is amended by adding a new section 16-111 to read as follows:

S 16-111. PROCEEDINGS WITH RESPECT TO THE FAIR CAMPAIGN CODE. 1. ANY PERSON CLAIMING TO BE AGGRIEVED BY ANY VIOLATION OF THE FAIR CAMPAIGN CODE SHALL HAVE A CAUSE OF ACTION THEREFOR IN SUPREME COURT, UNLESS SUCH PERSON HAD FILED A COMPLAINT WITH THE STATE BOARD OF ELECTIONS. NO PERSON WHO HAS INITIATED ANY ACTION IN SUPREME COURT ALLEGING A VIOLATION OF THE FAIR CAMPAIGN CODE MAY FILE A COMPLAINT WITH RESPECT TO THE SAME ALLEGED VIOLATION WITH THE STATE BOARD OF ELECTIONS. UPON A FINDING BY THE COURT, UPON CLEAR AND CONVINCING EVIDENCE, THAT A PERSON, POLITICAL PARTY OR COMMITTEE HAS VIOLATED ANY PROVISION OF THE FAIR CAMPAIGN CODE, SUCH VIOLATION SHALL BE PUNISHABLE BY A CIVIL PENALTY, NOT TO EXCEED ONE THOUSAND DOLLARS, TO BE IMPOSED BY THE COURT.

2. ANY ACTION OR DECISION OF THE STATE BOARD OF ELECTIONS PURSUANT TO THE PROVISIONS OF THIS ARTICLE MAY BE REVIEWED IN A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES INSTITUTED IN THE SUPREME COURT BY ANY AGGRIEVED CANDIDATE OR BY ANY PERSON UPON WHOM A PENALTY WAS IMPOSED BY SUCH STATE BOARD OF ELECTIONS OR BY ANY PERSON WHO FILED A COMPLAINT UPON WHICH SUCH DECISION OR ACTION WAS TAKEN.

3. A CAUSE OF ACTION BROUGHT IN SUPREME COURT SHALL BE A SPECIAL PROCEEDING HEARD UPON VERIFIED PETITION AND SUCH ORAL OR WRITTEN PROOF AS MAY BE OFFERED OR ORDERED BY THE COURT, AND UPON SUCH NOTICE TO SUCH OFFICERS, PERSONS, OR COMMITTEES AS THE COURT SHALL DIRECT, AND SHALL BE SUMMARILY DETERMINED. THE PROCEEDINGS SHALL HAVE PREFERENCE OVER ALL OTHER CAUSES IN ALL COURTS. IN ADDITION, UPON REQUEST OF A PARTY, THE COURT MAY ORDER EXPEDITED DISCOVERY. IN THE CITY OF NEW YORK, A PROCEEDING RELATING TO THE FAIR CAMPAIGN CODE BROUGHT PURSUANT TO THIS ARTICLE SHALL HAVE FIRST PREFERENCE OVER ALL OTHER PROCEEDINGS, EXCEPT PROCEEDINGS RELATING TO A RUN-OFF PRIMARY.

4. IN ADDITION TO ALLOWABLE COSTS AND DISBURSEMENTS AND IRRESPECTIVE OF WHETHER SUCH COSTS AND DISBURSEMENTS ARE AWARDED, THE COURT OR JUSTICE MAY ALLOW A REASONABLE ATTORNEY'S FEE TO THE PREVAILING PARTY EXCEPT THAT NO SUCH ATTORNEY'S FEE MAY BE AWARDED TO OR AGAINST THE STATE BOARD OF ELECTIONS.

S 5. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.